IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 7807 of 2007(D)

PETITIONER:

GEORGE VARGHESE, REPRESENTED BY
OFFICIAL GUARDIAN STANLEY GEORGE,
IDAYADIYIL NEW VILLA, (PAZHAYATTIL THEKKETHIL),
PERISSERY P.O., CHENGANNUR, ALAPPUZHA DISTRICT.

BY ADV. SRI.K.N.GOVINDANKUTTY MENON

RESPONDENTS:

---

1. ASST. EDUCATIONAL OFFICER,
OFFICE OF THE ASST. EDUCATIONAL OFFICER,
ARANMULA, CHENGANNUR.

2. DIRECTOR OF PUBLIC INSTRUCTION,
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

3. THE ACCOUNTANT GENERAL,
OFFICE OF THE ACCOUNTANT GENERAL,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy o the certificate.

Ext.P2: True copy of the certificate of Mental Retardation.

Ext.P3: True copy of the Nomination paper.

Ext.P4: True copy of the certificate dated 17.1.2000.

Ext.P5: True copy of the letter No.PPO No.86232307 dated 29.6.2006.

Ext.P6: True copy of letter dated 17.11.2003.

Ext.P7: True copy of letter dated 9.3.2006.

Ext.P8: True copy of letter dated 27.2.2006.

// True copy //

P.A. To Judge

jes

A.K.BASHEER, J.

W.P.(C)No.7807 OF 2007

Dated this the 2nd day of July, 2007

JUDGMENT

Sri.George Varghese is stated to be a mentally retarded person. He is being represented by his younger brother Sri.Stanley George in this writ petition filed under Article 226 of the Constitution.

2. Petitioner's mother Smt. Aelyamma had retired from service of the Government in the year 1993. Petitioner had been living in her care and custody throughout. Smt.Aelyamma passed away on January 17, 1999. Smt.Aelyamma left behind three other children apart from the petitioner. The legal heirship certificate issued by Tahsildar, Chengannur is on record as Ext.P4.

3. The legal heirs of Smt.Aelyamma, except the petitioner, informed the competent authority that they were willing to relinquish their claim for family pension in favour of their disabled brother, and requested that the entire pension be paid to him. The Government acceded to the above request. However, it was ordered that family pension will be paid to the

petitioner with effect from March 15, 2006 only. In other words, pension has been denied to the petitioner from the date of death of his mother. It is in the above circumstances that this writ petition has been preferred contending inter alia that the refusal of the Government to grant family pension from the date of death of the retired employee is totally illegal and unsustainable.

4. It is contended on behalf of the respondents that the above decision was taken by the Government in the light of the circular bearing No.10/2000/Fin. Dated 17.2.2000 issued by the Pension-C Department. In the counter affidavit, it is averred that family pension is normally granted to spouse and unmarried children upto the age of 25 only. However, the above benefit can be extended to disabled children as a special case. The said concession is normally granted by the Government only in special circumstances subject to certain conditions such as production of proof of dependency.

5. Learned Government Pleader submits that the Government is convinced that petitioner is a mentally retarded

person. It has also come to the notice of the Government that petitioner was dependent on his mother till her death. It was therefore that the Government had decided to extend the benefit of family pension to the petitioner in relaxation of the normal procedure. But since it was a concession that was being extended to the petitioner and that too in the light of the circular referred to above, it was decided that the family pension can be awarded only from the date of the order.

I am unable to agree with the above contention. Indisputably, petitioner is a mentally retarded person. That the petitioner had been dependent on his deceased mother till her death is also beyond dispute. If that be the reality, I do not find any justification in the stand taken by the Government. In my view petitioner is entitled to get the benefit of family pension from the date of death of the retired employee, and not from the date of the order. Ordered accordingly. Writ petition is allowed in the above terms.

A.K.BASHEER, JUDGE

jes